IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 12.10.2007

CORAM

THE HONOURABLE MR. JUSTICE S.J.MUKHOPADHAYA
AND
THE HONOURABLE MR. JUSTICE N.PAUL VASANTHAKUMAR

W.A. NO. 264 OF 2006
AND
W.A.M.P. NO.264 OF 2007

N.Bhaskaran .. Appellant

- Vs -

1. Tamil Nadu Uniformed Forces
   Recruitment Board, rep. by
   its Secretary
   807, Anna Salai, Chennai 2.

2. Director General of Police
   Chennai 600 004.

3. Secretary to Government
   Government of Tamil Nadu
   Home Department
   Secretariat, Chennai 9. .. Respondents
   (R-3 impleaded as per order of Court
   dated 4.9.07 in WAMP 1579/06)

Writ Appeal filed against the order dated 17.9.2004 passed by the learned single Judge in W.P. No.20220 of 2004 as stated therein.

For Appellant : Mr. S.James

For Respondents : Mr. D.Srinivasan, AGP

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JUDGMENT

S.J.MUKHOPADHAYA, J.

This writ appeal has been preferred by the appellant against the order dated 17th Sept., 2004, passed by learned single Judge in W.P. No.20220/04. By the said order, learned single Judge rejected the petitioner's prayer for appointment to the post of 2nd Grade Police Constable and dismissed the writ petition.

2. The case of the appellant is that during the year 2001, the 1st respondent called for application for appointment to the post of 2nd Grade Police Constable. He, along with others applied and having come out successful in the written test held on 16th June, 2002, was sent for

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medical examination on 25th Aug., 2002. After medical examination, his name was referred for police verification, but inspite of the fact that he had disclosed the fact that a criminal case was pending on the file of the Judicial Magistrate No.I, Sivaganga, against him and that the said case ended in his acquittal on 25th Sept., 2002, no order of appointment has been issued in his favour.

3. Counsel for the appellant submitted that the case ended in acquittal and, therefore, cannot be treated as a bar for his appointment. Inspite of the same, the respondents, by their proceeding dated 8th July, 2004, has informed that he was not selected on the basis of the police report.

Learned counsel for the appellant also challenged the provision of Rule 14 (b) of the Tamil Nadu Police Subordinate Service Rules, 1978, (hereinafter referred to as 'Rules') as ultra vires Article 14 and submitted that the said rule cannot be relied upon to deny appointment to the appellant.

4. Admittedly, the appellant was an accused (Accused No.5) in a criminal case in C.C. No.286/01 on the file of Judicial Magistrate Court No.1, Sivaganga in Crime No.108/01 for the offence u/s 147 and 323 IPC. During the pendency of the trial, P.W.s 1 and 2, along with accused, filed a petition u/s 320 IPC alleging that they have come to a compromise. Since certain offences were non-compoundable, the said application was dismissed, but the victims, P.W.s 1 and 2 and the eye witness, P.W.3, ultimately turned hostile. In view of the same and further as they had filed a petition alleging that they had compromised, the Court was of the opinion that there was no purpose to keep the said case pending and, therefore, closed the prosecution's case giving the benefit of doubt in favour of the accused. In view of such antecedent, police report was submitted against the appellant, which was taken into consideration to refuse to appoint the appellant as a police constable.

5. Rule 14 deals with qualification for appointment. Sub-rule (b) of Rule 14 originally read as follows :-

> "14. Qualification :
> x x x x x x x x
> (b) No person shall be eligible for appointment to the service by direct recruitment unless he satisfies the appointing authority
> (i) that he is found health active habits and free from any bodily defect or infirmity unfitting him for that service; and
> (ii) that his character and antecedents are such as to qualify him for such service."

Subsequently, in exercise of power conferred by Section 8 and 10 of the Tamil Nadu District Police Act, 1859 and Sections 9 and 10 of the Chennai City Police Act, 1988 read with proviso to Article 309 of the Constitution of India, the said Rule was amended vide G.O. Ms. No.101 dated 30.1.03, relevant portion of which is quoted hereunder :-

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"In the said Rules in Rule 14 :-
(1) x x x x x x x x
(2) In sub rule (b), after clause (iii), the following clause shall be added, namely :-
(iv) that he has not involved in any criminal case before Police Verification;
Explanation :- (1) A person who is acquitted or discharged on benefit of doubt or due to the fact that the complainant "turned hostile" shall be treated as person involved in a criminal case;
Explanation :- (2) A person involved in a criminal case at the time of police verification and the case yet to be disposed of and subsequently ended in honourable acquittal or treated as mistake of fact shall be treated as not involved in a criminal case and he can claim right for appointment only by participating in the next recruitment.
x x x x x x x x"

6.Learned counsel for the appellant submitted that the 1st Explanation below amended Rule 14 (b) is arbitrary and violative of Article 14 of the Constitution of India. According to him, no distinction could be made between two similarly situated persons, who have been acquitted in a criminal case on the ground that one has been acquitted giving benefit of doubt due to the complainant turning hostile and the other acquittal is on merit. In criminal jurisprudence, in case of acquittal, no distinction has been made on the ground that one acquittal is based on merit and the other acquittal is due to benefit of doubt.

7. From Rule 14 (b) (ii), it will be evident that no person is eligible for appointment to the service if his character and antecedents are such as to qualify him for such service. This character and antecedents has nothing do to with the question whether a person is merely an accused or convicted or acquitted. To give benefit to those who have been acquitted honourably, or was implicated because of mistake of fact have been put in a different class. Under 2nd Explanation, they are to be treated "not involved in a criminal case" and, therefore, for the purpose of appointment, it cannot be held that they were involved in a criminal case. Otherwise, if a person is an accused in a criminal case, he cannot claim any right of appointment and due to such antecedent, it is always open to the employer to deny appointment.

8. In the case of Delhi Administration through its Chief Secretary & Ors. - Vs – Sushil Kumar reported in JT 1996 (10) SC 34 :: 1996 (11) SCC 605, the Supreme Court noticed that the candidate was acquitted of the offence under Sections 304 and 324 read with 34 IPC. The employer denied appointment, but the Central Administrative Tribunal, New Delhi, allowed the claim of the candidate on the ground that he was acquitted. In the said case, the Supreme Court, though noticed that the candidate was physically fit, passed the written test and interview and was provisionally selected for appointment to the post of police constable, held that though the person was discharged or acquitted of an criminal offence, the same has nothing to do with the question. What will be relevant is the conduct or character of the candidate appointed to a service and not the actual result thereof. The decision of the appointing

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authority focussing on this aspect having found that it was not desirable to appoint such candidate, the decision of the Tribunal was set aside.

The appellant, being similarly situated, as he was involved in a criminal case and was acquitted because the complainant became hostile and due to compromise reached between the complainant, he cannot claim that he was not involved in a criminal case.

9. For the reason aforesaid, no interference is called for with the order passed by the appointing authority as affirmed by learned single Judge. There being no merit, the writ appeal is dismissed. Consequently, connected miscellaneous petition is also dismissed. But there shall be no order as to costs.

GLN

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary
   Tamil Nadu Uniformed Forces
   Recruitment Board
   807, Anna Salai, Chennai 2.

2. Director General of Police
   Chennai 600 004.

3. Secretary to Government
   Government of Tamil Nadu
   Home Department
   Secretariat, Chennai 9.

+1 cc to Mr.S.James, Advocate Sr.No.63301.

+1 cc to The Government Pleader Sr.No.63266.

SJ(CO)
dcp/17.10

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